**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A. No.696 OF 2009**

**JUDGMENT:**

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 09.05.2005 passed in O.P.No.636 of 2003 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-Chief Judge, City Civil Courts, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 19.11.2002, one Suresh (hereinafter referred to as the deceased) was proceeding to Charkonda from Kalwakurthy in a Jeep bearing No.AP 9J 1437 on official work. When the jeep reached near Kamalapur Tanda, the driver of Lorry bearing No.
AP 16X 1957 had driven the same in a rash and negligent manner and dashed against the jeep from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom, the Station House Officer, Vangoor Police Station registered a case in Crime No.93 of 2002 for the offences punishable under Sections 304-A and 337 I.P.C. Due to injuries, the deceased died on the spot. By the time of accident, the deceased was aged about 45 years and used to earn Rs.7,966/- as an employee in Andhra Bank, Sultan Bazar, Hyderabad. The petitioners are dependants on the income of the deceased. Hence, the petition is filed claiming compensation of Rs.9,00,000/-. The lorry which belongs to respondent No.1 was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. Respondent No.1 remained *ex-parte.* Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the drivers of both the vehicles, therefore, owner and insurer of the jeep are necessary and proper parties to this petition. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the deceased died in the accident that took place due to rash and negligent driving of the driver of Lorry bearing No.AP 16X 1957?

(2) Whether the petitioners are entitled for compensation, if so to what amount and from whom?

(3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.8 were marked. On behalf of the contesting respondent, no oral evidence was let in and Ex.B.1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.6,70,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation directing the respondents to deposit the compensation amount.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri C.Vikram Chandra, the learned counsel for the petitioners and Sri K.Sitaram, the learned counsel for respondent No.2.

10. Learned counsel for the petitioners submitted that the Tribunal has not taken the appropriate multiplier while determining the loss of dependency. He further submitted that the Tribunal ought to have deducted 1/4$^{th}$ towards personal expenses of the deceased instead of 1/3$^{rd}$. He also submitted that the amount of compensation awarded by the Tribunal under various heads is too meagre.

11. Per contra, the learned counsel for respondent No.2 submitted that the Tribunal awarded just and reasonable compensation to the petitioners.

12. Now the point that arises for consideration in this appeal is:

> Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

***Point***:

13. Basing on the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry. Respondent No.2 did not file appeal or cross-objections challenging the finding recorded by the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final.

14. Having regard to the facts and circumstances of the case,
I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased.

15. The oral testimony of PW.1 coupled with Ex.A.6 – Salary Certificate reveals that by the time of accident, the deceased was

drawing gross salary of Rs.7,966-50 ps. and net salary of Rs.7,241-50 ps. The Tribunal has not deducted income tax of the deceased. The Tribunal has rightly taken the monthly income of the deceased as Rs.7,241-50 ps. Per annum it comes to Rs.86,898/-. The Tribunal deducted 1/3rd towards personal expenses of the deceased. In the present case, the claimants are four in number. If the claimants are four in number, the Tribunal or the Court has to deduct 1/4th towards personal expenses of the deceased in view of the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**[1]. The deceased may contribute Rs.65,174/- per annum (86,898 – 21,724). As per the finding of the Tribunal, the deceased was aged about 45 years by the time of accident. Basing on the decision reported in **Bhagawandas vs. Mohd. Arif**[2], the Tribunal has taken the multiplier as '11'. As per **Sarla Verma**'s case (supra 1), the appropriate multiplier to be taken for the age group of 41-45 is '14'. The loss of dependency comes to Rs.9,12,436/- (65,174 X 14). The Tribunal has also awarded an amount of Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

| | | |
|---|---|---|
| 01. | Loss of dependency | Rs.9,12,436/- |
| 02. | Loss of consortium | Rs. 15,000/- |
| 03. | Loss of estate | Rs. 15,000/- |
| | Total: | Rs.9,42,436/- |

16. The petitioners filed the petition claiming compensation of Rs.9,00,000/- only. Hence, this Court is inclined to award an amount of Rs.9,00,000/-.

17. In the result, the Appeal is allowed by enhancing the quantum of compensation from Rs.6,70,000/- to Rs.9,00,000/-. The petitioners are

entitled for interest on the enhanced amount of compensation at the rate of 7.5% per annum from the date of petition till the date of realisation. Petitioner No.1 alone is entitled for the enhanced amount of compensation. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 04.03.2015
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[1]. 2009 ACJ 1298
[2] 1987 (2) ALT 137